"Whilst causation is the deciding factor in determining whether there should be a reduced amount payable to the plaintiff, nevertheless, the amount of reduction is such an amount as may be found by the court to be 'just and equitable' having regard to the claimant's share in the responsibility for the damage".

It is not clear from the record, in the present case, as to how the accident happened. The appellant's version is that the accident happened when the respondent attempted to pass a stationary car to his left as his lorry was about to do the same. The learned trial judge accepted the story of a stationary car with reserve, but held that even if there was one, the accident took place after the respondent had passed it. He further found that the lorry was travelling fast on the crown of the road and that the respondent had at least a width of six feet of the road to himself to take avoiding action. To this must be added another 4′ 10″ of unmetalled track to the left of the road which according to the photographs exhibited at the trial is not on a slope as testified by the respondent. It is reasonable, therefore, to assume that the accident would not have taken place, even if the lorry was travelling at a fast speed, if both parties had kept a proper look-out. It would appear, in the first instance, as if both parties are equally responsible for the damage sustained.

However, in this case, all things are not equal. The respondent was riding a bicycle and the appellants' driver was driving a motor vehicle, which in the hands of a driver who fails to keep a proper look-out becomes a leathal weapon. The duty of care owed by the driver of a motor vehicle is far more onerous than that of a cyclist. It is, therefore, difficult to say that the apportionment by the trial judge was not fair and equitable, since, in the words of a commentator in *Mayne and McGregor* (12th Ed. 59) "figures and percentages are so much a matter of impression depending on the particular circumstances."

The appeal is dismissed with costs.

Barakbah L.P. and **Suffian F.J.** concurred.

Appeal dismissed.

Solicitors: *Sault, Keith Sellar & Co.; D. A. Devadason.*

WEE SOON HIAN v. LAI CHING MOW

[O.C.J. (Winslow J.) June 19, 1968]
[Singapore — Suit No. 2163 of 1967]

Negligence — Taxi driver swerving sharply to the left to avoid a head-on collision with vehicle on its wrong side of road — Plea of inevitable accident.

Road Traffic — Inevitable accident — Plea of.

The plaintiff was a passenger in the taxi driven by the defendant. He alleged that he received injuries when the taxi, due to the alleged negligence of the defendant, ran off the road and overturned at or near the 5 m.s. Upper Thomson Road. He had in his report to the police said that when the taxi arrived at the 5¾ m.s. an on-coming vehicle took too much of the road and when the defendant swerved the taxi on the left to avoid colliding into the on-coming vehicle the taxi skidded into the drain on the left hand side of the road. The defendant pleaded inevitable accident. He denied the alleged or any negligence and claimed that the taxi skidded and fell into the drain when he swerved sharply to the left while negotiating a left-hand bend at a speed of about 25-30 m.p.h. in order to avoid a head-on collision with an unknown motor car which had encroached into the defendant's path from the opposite direction.

At the trial the plaintiff admitted making a report to the police but denied its contents. He stated that the report was recorded by a police officer as dictated by the defendant himself in his presence and that the report contained the defendant's version of the accident. He alleged that the defendant was driving fast while negotiating a left bend, skidded and fell into a ditch.

Held, dismissing the claim: the avoiding action taken by the defendant was one which any reasonable user of the road, confronted with the possibility of a head-on collision through no fault of his own, could well have adopted to minimise the impending disaster of having to commit virtual suicide.

[**Editorial Note:** Reference may be made to *Tan Gim Seng* v. *Gurdev Singh Gill* [1967] 2 M.L.J. 154 which was cited in argument but not referred to in the judgment.]

CIVIL SUIT.

H. E. Cashin (*Richard Ho* with him) for the plaintiff.

M. Coomaraswamy for the defendant.

Cur. Adv. Vult.

Winslow J.: This is one of those infrequent cases where I have no hesitation at all in rejecting the evidence of the plaintiff on all disputed matters. He was clearly proved to be a liar on about the most material issue in the case, to wit, whether there was an oncoming car which encroached on the defendant's side of the road in such a manner as to render the defendant's action inevitable in, what is frequently referred to as, the "agony of the moment". I have found it impossible to place any reliance in him at all. On the contrary, I accept the defendant as, substantially, an honest and reliable witness.

Taking the view which I do about their respective attitudes towards the truth, I do not propose to enter into a detailed analysis of their evidence.

I am satisfied beyond doubt that what the plaintiff himself said about the oncoming car in his original police report, to wit, that it took too much of the road and caused the defendant to swerve left to avoid it, which he denied in evidence, was a true account of what actually took place and that he has subsequently seen fit to falsify and tailor his evidence to suit the remedy he now seeks.

In my judgment, he has hopelessly failed to establish any negligence on the defendant's part. This should suffice to dismiss his claim but since

the defendant's veracity has been called in question, I feel I ought to state my own views on his version of the accident which I have no hesitation in accepting as a true version of what really occurred.

As counsel who took over the conduct of the plaintiff's case at the continued cross-examination of the defendant on 30th May, after the case had been part-heard previously on 10th May this year, has himself stated in other motor accident cases in which he has appeared before me, it is difficult for witnesses to be mathematically precise some time after the event about matters such as times, distances and speeds. It is small wonder, therefore, that the defendant who was driving the taxi, in which the plaintiff was a passenger, just after midnight on the morning of 5th January, 1967, on a left-hand bend in Upper Thomson Road at about the 5¾ milestone towards the city, was unable to be as mathematically precise about these matters as he was expected and required to be on this particular occasion.

Despite any apparent lack of precision on his part, I am satisfied, on the evidence as a whole, that he was telling the truth to the best of his ability as to why his taxi went off the road on to the grass verge and then landed upside down in a drain to his left.

I am also satisfied that there was an oncoming car which he suddenly saw approaching him at speed on his own half of the road after he had completed the left-hand bend. This left him with no alternative except to try to minimise the impending disaster as best he could. I do not accept the suggestion that he should have been crawling round the bend as he reached it at a very low speed in order to avoid possible speed maniacs who might have been bent on entering the bend from the opposite direction by slicing it. He had driven on this particular route for a long time without mishap and even the plaintiff stated that on this particular night he had driven quite well from the 13th milestone until the accident.

I am satisfied that the avoiding action taken by him was one which any reasonable user of the road, like himself, confronted with the same situation, *i.e.* a head-on collision through no fault of his own, could well have adopted on emerging out of this particular bend short of having to commit virtual suicide. In other words, I accept his explanation.

The plaintiff's claim cannot succeed from any point of view and is accordingly dismissed with costs.

Claim dismissed.

Solicitors: *Murphy & Dunbar; Rodyk & Davidson.*

MOHAMED AMIRDIN v. VARATHARAJAN

[A.C.J. (Yong J.) July 1, 1968]
[K.L. — Civil Appeal No. 20 of 1967]

Practice and Procedure — Appeal — Finding of fact — Credibility of witnesses — When appellate court will upset such finding.

Bills of Exchange — Dishonoured cheque — No notice of dishonour — Waiver of notice — Bills of Exchange Ordinance, 1949, s. 50(2).

At the trial, the respondent claimed that he had given a friendly loan of $1,000 to the appellant without charging interest and had accepted from him as security a cheque for $1,000 which was dishonoured when it was presented to the bank for payment. The appellant denied borrowing any money from the respondent but admitted signing the said cheque which he alleged he had given to his clerk. It was also alleged by the appellant that the respondent had lent the said $1,000 to the said clerk with interest and that the Moneylenders Ordinance 1951 was thereby contravened. The appellant further claimed that no due notice of dishonour of the cheque was given to him. After considering the evidence and the credibility of witnesses, the learned magistrate found as a fact that the respondent had made a loan of $1,000 without interest to the appellant. He held that the Moneylenders Ordinance, 1951, did not apply and that no notice of dishonour of the cheque need be given to the appellant.

Held, dismissing the appeal: (1) the court, not being satisfied that the trial magistrate was plainly wrong in coming to the conclusions as he did will not upset his finding of fact based on his opinion of the credibility of witnesses whom he had seen and heard;

(2) by reason of section 50(2) of the Bills of Exchange Ordinance, 1949, the drawer of a cheque is not entitled to notice of dishonour if such notice is waived, express or implied. The appellant, by not having sufficient effects in his bankers' hands and having made no arrangement with them for an overdraft to meet the amount drawn on the cheque, had dispensed with the notice by waiver.

Cases referred to:—

(1) *Clarke* v. *Edinburgh & District Tramways Co. Ltd.* 1919 S.C. (H.L.) 35.

(2) *Powell & Wife* v. *Streatham Manor Nursing Home* [1935] A.C. 243.

(3) *Tay Kheng Hong* v. *Heap Moh Steamship Co. Ltd.* [1964] M.L.J. 87.

(4) *Tan Tek Yan* v. *Samuel* [1964] M.L.J. 283.

(5) *Lombard Banking Ltd.* v. *Central Garage* [1962] 2 All E.R. 949.

(6) *Cordery* v. *Colville* (1863), 32 L.J.C.P. 210.

CIVIL APPEAL.

Hussain Hassan for the appellant.

V. K. Palasuntharam for the respondent.

Cur. Adv. Vult.

Yong J.: The respondent (who was plaintiff in the suit) claimed that he had given a friendly loan of $1,000 to the appellant without charging interest and had accepted from him as security a cheque for $1,000, which when presented to the bank for payment was dishonoured.

The appellant denied borrowing any money from the respondent, but admitted executing the